

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WILLIE J. HICKLES,

Plaintiff,

v.

Case No. 06-C-0226

DR. ENRIQUE LUY, *et al.*,

Defendants.

ORDER

Plaintiff Willie J. Hickles filed a civil rights complaint under 42 U.S.C. § 1983 and moved for leave to proceed in forma pauperis. By its Order of February 28, 2006, the court required plaintiff to pay an initial partial filing fee of \$61.48 in order to proceed. *See* 28 U.S.C. § 1915(b). Plaintiff has now moved for an order permitting him to pay the initial partial filing fee from his release account. The trust account statement accompanying plaintiff's motion shows that he had a balance of \$7.45 in his regular account and a balance of \$288.97 in his release account as of February 28.

The court has the power to order release of funds from plaintiff's release account to pay an initial partial filing fee. *Spence v. McCaughtry*, 46 F. Supp. 2d 861 (E.D. Wis. 1999). The use of such funds is limited, however, to the amount that is necessary to pay the initial partial filing fee after all the funds in plaintiff's regular account have been applied toward that purpose. Here, it appears that plaintiff can pay some of the filing fee from his regular account.

IT IS THEREFORE ORDERED that the Secretary of the Wisconsin Department of

Corrections or his designee shall collect from plaintiff's regular and release accounts the \$61.48 initial partial filing fee in accordance with 28 U.S.C. § 1915(b)(1). No deduction shall be made from plaintiff's release account until all of the funds in his regular account have been applied toward the fee. The payment shall be forwarded to the clerk of this court and clearly identified by the case name and the number assigned to this action.

Upon payment of the initial partial filing fee, the court will determine whether the action can continue to proceed. The court will review the complaint to determine that the action is not frivolous or malicious and that the complaint states a claim upon which relief can be granted. If the complaint does not meet this standard, the action will be dismissed.

IT IS ALSO ORDERED that copies of this order be sent to the warden of the institution where the inmate is confined and to Corey Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

Dated this 8th day of March, 2006.

s/William C. Griesbach
William C. Griesbach
United States District Judge